

UNITED STATES DISTRICT COURT

for the

Eastern District of Pennsylvania

United States of America

v.

MARK DAVID KIRBY

Case No. 21-MJ-264

Defendant(s)

CRIMINAL COMPLAINT

I, the complainant in this case, state that the following is true to the best of my knowledge and belief.

On or about the date(s) of February 29, 2020 in the county of Berks in the
Eastern District of Pennsylvania, the defendant(s) violated:

*Code Section**Offense Description*

18 U.S.C. 2252(a)(2)

Receipt of Child Pornography

See Attachment A

This criminal complaint is based on these facts:

See attached affidavit

☒ Continued on the attached sheet.

/s/ Christopher Duncanson

Complainant's signature

Christopher Duncanson, Special Agent, FBI

Printed name and title

Sworn to before me and signed in my presence.

Date: 02/09/2021City and state: Allentown, PA

Henry S. Perkin

Digitally signed by Henry S. Perkin
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Judge's signature

Hon. Henry S. Perkin, U.S. Magistrate Judge

Printed name and title

AFFIDAVIT OF FBI SPECIAL AGENT CHRISTOPHER M. DUNCANSON
IN SUPPORT OF ARREST WARRANT

I, Christopher M. Duncanson, a Special Agent with the Federal Bureau of Investigation (FBI), Philadelphia Division, being duly sworn, depose and state as follows:

1. I have been employed as a Special Agent of the FBI since September 2004, and am currently assigned to criminal investigations, federal criminal violations related to high technology or cybercrime, child exploitation, and child pornography. I have gained experience through training and everyday work related to conducting these types of investigations. I have received training in the area of child pornography and child exploitation and have had the opportunity to observe and review numerous examples of child pornography (as defined in 18 U.S.C. § 2256) in all forms of media including computer media. I have participated in investigations of persons suspected of violating federal child pornography laws, including 18 U.S.C. § 2252. I have also participated in various FBI-mandated and other training for the investigation and enforcement of federal statutes prohibiting the production, distribution, and possession of child pornography.

2. As a Federal Agent, I am authorized to investigate violations of laws of the United States and to execute warrants issued under the authority of the United States.

3. The statements in this Affidavit are based, in part, on information provided by other investigators, and on my investigation of this matter. Since this affidavit is being submitted for the limited purpose of securing an arrest warrant, I have not included each and every fact known to me concerning this investigation.

4. I submit there is probable cause to believe that on or about February 29, 2020 MARK DAVID KIRBY did knowingly receive child pornography, in violation of 18 U.S.C.

§ 2252(a) which prohibits any person from knowingly transporting, shipping, receiving, distributing, reproducing for distribution, possessing, or accessing with intent to view any visual depiction of minors engaging in sexually explicit conduct, which was produced using a minor engaged in such conduct, when such visual depiction was either mailed or shipped or transported in interstate or foreign commerce, or in or affecting interstate commerce, by any means, including by computer, or when such visual depiction was produced using materials that had traveled in interstate or foreign commerce, and any attempts to do so.

BACKGROUND OF THE INVESTIGATION

5. On November 1, 2019 and from February 22 to February 29, 2020 a computer running peer-to-peer file sharing software, with an IP address of 174.60.50.254, was identified as downloading images or videos known by law enforcement to depict child pornography. Two of these files whose downloads were complete on February 29, 2020, are described below (Count One – Receipt of Child Pornography):

- a. **DSC_suck%2002.MOV** is a video of a prepubescent female child that appears to be approximately 4-7 years of age, appears to be topless and lying on her back while an adult penis is repeatedly inserted into her mouth until she gags. What appears to be the hand of an adult male is covering the top of her face above her nose.
- b. **DSC_0249.MOV** is a video of a prepubescent female child that appears to be approximately 4-7 years of age. She appears to be topless and lying on her back while licking an adult penis as what appears to be an adult male hand strokes her hair and face. The penis is

also inserted into her mouth. The child in this video appears to be the same child described in the previous paragraph.

6. Using publicly available search tools, law enforcement determined that IP address 174.60.50.254 was controlled by Internet Service Provider (“ISP”) Comcast Cable Communications LLC. Pursuant to an administrative subpoena, Comcast Cable Communications LLC advised the subscriber for this IP address at these dates and times was: MARK KIRBY, 3513 Penn Avenue, Sinking Spring, Pennsylvania 19608.

7. On May 21, 2020, your Affiant applied for and was granted a federal search warrant by United States Magistrate Judge Henry S. Perkin, Eastern District of Pennsylvania, to search the residence at 3513 Penn Avenue, Sinking Spring, PA 19608, the residence of MARK KIRBY, and seize evidence of violations of 18 U.S.C. § 2252.

8. On May 22, 2020, this search warrant was executed at 3513 Penn Avenue, Sinking Spring, PA 19608. KIRBY was the only person in the residence.

9. During the search, KIRBY was interviewed by your Affiant. KIRBY admitted to using the file sharing program described in the affidavit for the search warrant but denied using the program to view or obtain child pornography. KIRBY also stated that he was the only person who lived at the residence.

10. A black custom-built computer tower with a serial number of 1634FD25830500696 was seized from the residence. The computer was located on the second floor of the home in an office. The computer was analyzed at the FBI’s Regional Computer Forensics Laboratory in Radnor, Pennsylvania. More than 1000 thumbnail images were found on the computer that had been previously identified by law enforcement as depicting child

pornography. Your Affiant reviewed these files and more than 300 depicted child pornography within the meaning of 18 U.S.C. § 2256, including the following examples:

- a. **d032a42f893f568b568a25cb2f669ce0.png**: a nude prepubescent female child performing oral sex on an adult male.
- b. **4e4cd5a352d08ef4632eb208a1d9cd4d.png**: an adult male engaged in vaginal intercourse with a prepubescent female child. The child is nude from the waist down and her face is covered.
- c. **2cb2e813af71f77e4e3272698ca331e2.png**: a nude prepubescent female child seated next to a nude adult male. Both are visible from their chests to their knees and the child is holding the adult's penis.
- d. **88dd912a3f0286b9117028df84af1f01.png**: a nude prepubescent female child straddling the head of an adult male who appears to be performing oral sex on the child.
- e. **f7b9f59b4d6eecfe07e06bfd25dc04ae.png**: a nude prepubescent female child visible from her midsection up with the words "fuck me" written on her chest. Two nude adult males are standing near her holding their penises close to her mouth.

11. Two additional files, DSC_suck 02.MOV.thumbs.jpg.sim and DSC_0249.MOV_thumbs.jpg.sim, were also located. These thumbnail images bear names similar to the files described in Paragraph 5 above (DSC_suck%2002.MOV and DSC_0249.MOV).¹ Based on your Affiant's training and experience, these thumbnail files indicate that the files described in Paragraph 5 were downloaded and stored on this computer.

¹ A thumbnail image is an image of a graphic or document that is reduced in size so that it serves as an icon of a larger image or to allow multiple images to be viewed on a screen simultaneously or to be transmitted more rapidly.

12. On February 1, 2021 your Affiant applied for and was granted a federal search warrant by United States Magistrate Judge Henry S. Perkin, Eastern District of Pennsylvania, to again search the residence at 3513 Penn Avenue, Sinking Spring, PA 19608, the residence of MARK KIRBY, and seize evidence of violations of 18 U.S.C. § 2252.

13. On February 9, 2021, this search warrant was executed at 3513 Penn Avenue, Sinking Spring, PA 19608. KIRBY was observed leaving the residence and traveled to a nearby convenience store. After being detained by your Affiant, KIRBY provided a key to access the residence. No one else was present in KIRBY's residence.

14. A black custom-built computer tower was found in the residence in the same office and on the same desk as the computer referenced in paragraph 10 that had been seized from KIRBY during the execution of the first search warrant. An on-site forensic preview of this computer by the FBI identified more than 1,000 images and videos on the computer that depicted child pornography. These images almost exclusively depicted nude female children approximately five to eight years old engaged in sexual activity or with their genitalia prominently displayed in sexually suggestive poses. All of these images were observed under a user profile named "Mark," the same first name as defendant MARK KIRBY.

CONCLUSION

15. Based upon the information above, I respectfully submit that there is probable cause to believe that MARK DAVID KIRBY, date of birth August 26, 1969, did knowingly receive child pornography, that is, visual depictions of minors engaged in sexually explicit conduct, and did cause them to be transmitted over the internet, a facility of interstate or foreign commerce in violation of 18 U.S.C. § 2252(a)(2) as further described in Attachment A. I

therefore, respectfully request that the arrest warrant be issued authorizing the arrest of MARK DAVID KIRBY.

/s/ Christopher Duncanson
Christopher M. Duncanson
Special Agent
Federal Bureau of Investigation

Sworn and subscribed

before me this 9th day of February, 2021.

Henry S. Perkin

Digitally signed by Henry S. Perkin
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HONORABLE HENRY S. PERKIN,
UNITED STATES MAGISTRATE JUDGE

ATTACHMENT A

Count One – Receipt of Child Pornography – 18 U.S.C. Section 2252(a)(2)

On or about February 29, 2020, in the Eastern District of Pennsylvania, defendant MARK DAVID KIRBY did knowingly receive visual depictions, using a means or facility of interstate and foreign commerce (that is, the Internet) and in and affecting interstate and foreign commerce, which visual depictions showed minors engaged in sexually explicit conduct, and the producing of those visual depictions involved the use of minors engaging in sexually explicit conduct.